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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

2006 JUN 21 P 1:01

AZ CORP COMMISSION  
DOCUMENT CONTROL

IN THE MATTER OF THE NOTICE OF  
INTENT BY AT&T INC. PURSUANT TO  
A.A.C. R14-2-803 OR, ALTERNATIVELY,  
FOR A LIMITED WAIVER OF THE  
COMMISSION'S AFFILIATED INTERESTS  
RULES

DOCKET NO. T-02428A-06-0203  
T-03016A-06-0203  
T-03116A-06-0203  
T-03287A-06-0203  
T-03346A-06-0203

**STAFF'S NOTICE OF FILING OF DIRECT  
TESTIMONY**

Staff of the Arizona Corporation Commission ("Staff") hereby files the Direct Testimony of Armando Fimbres of the Utilities Division in the above-referenced matter. A confidential version of Armando Fimbres' testimony has also been provided under seal to the Commissioners, their Aides, the assigned Administrative Law Judge.

RESPECTFULLY submitted this 21<sup>st</sup> day of June, 2006.

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Original and thirteen (13) copies  
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21st day of June, 2006 with:

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

JEFF HATCH-MILLER  
Chairman  
WILLIAM A. MUNDELL  
Commissioner  
MARC SPITZER  
Commissioner  
MIKE GLEASON  
Commissioner  
KRISTIN K. MAYES  
Commissioner

IN THE MATTER OF THE NOTICE OF INTENT	)	DOCKET NOS. T-02428A-06-0203
BY AT&T INC. PURSUANT TO A.A.C. R14-2-803	)	T-03016A-06-0203
OR, ALTERNATIVELY, FOR A LIMITED	)	T-03287A-06-0203
WAIVER OF THE COMMISSION'S AFFILIATED	)	T-03346A-06-0203
<u>INTERESTS RULES</u>	)	T-03116A-06-0203

DIRECT

TESTIMONY

OF

ARMANDO FIMBRES

PUBLIC UTILITIES ANALYST V

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

REDACTED

JUNE 21, 2006

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**EXECUTIVE SUMMARY**  
**AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC.,**  
**TCG PHOENIX, BELL SOUTH LONG DISTANCE, INC.,**  
**SBC LONG DISTANCE, LLC, SNET AMERICA, INC.**  
**DOCKET NOS. T-02428A-06-0203, T-03016A-06-0203, T-03287A-06-0203,**  
**T-03346A-06-0203, T-03116A-06-0203**

AT&T Corporation ("AT&T") and BellSouth Corporation ("BellSouth") have very different competitive positions within the Arizona telecommunications marketplace. AT&T is a well-established corporation providing local exchange and long distance service in the state of Arizona, while BellSouth has essentially zero presence.

AT&T has a significant and measurable share of Arizona's telecommunications market while BellSouth's presence in Arizona is strategic at best.

The parties have almost no overlap in their Arizona operations. Combining the separate operations of AT&T and BellSouth should not result in duplicate operations in Arizona that would require force reductions and the realignment of resources.

AT&T has already decided to curtail its local exchange operations in Arizona. A merger with BellSouth is not likely to change that decision.

1   **INTRODUCTION**

2   **Q.    Please state your name, occupation, and business address.**

3   A.   My name is Armando Fimbres. I am a Public Utilities Analyst V employed by the  
4       Arizona Corporation Commission ("ACC" or "Commission") in the Utilities Division  
5       ("Staff"). My business address is 1200 West Washington Street, Phoenix, Arizona 85007.

6  
7   **Q.    Briefly describe your responsibilities as a Public Utilities Analyst V.**

8   A.   In my capacity as a Public Utilities Analyst, I provide information and analysis to Staff on  
9       telecommunications tariff filings, emerging industry issues, such as VoIP, and matters  
10      pertaining to major applications, such as the merger application filed by SBC and AT&T.

11  
12   **Q.    Please describe your educational background and professional experience.**

13   A.   I received a Bachelor of Science degree from the University of Arizona in 1972 and have  
14       taken business and management courses at Seattle University, Northwestern University  
15       and the University of Southern California. I was employed for nearly twenty-nine years in  
16       Bell System or Bell System-derived companies, such as Western Electric, Pacific  
17       Northwest Bell, U S WEST and Qwest. The last twenty years of my Bell System  
18       telecommunications experience were in operations planning, corporate planning, or  
19       strategic planning roles with a special emphasis from 1994 to 2000 on competitive and  
20       strategic analysis for the Consumer Services Marketing division of U S WEST and  
21       similarly from 2000 to 2001 for Qwest. I have been with the Arizona Corporation  
22       Commission Utilities Division since April 2004.

1 **Q. What is the scope of your testimony in this case?**

2 A. I will address the competitive environment in which the merger between AT&T  
3 Corporation (“AT&T”)<sup>1</sup> and BellSouth Corporation (“BellSouth”) is being evaluated. My  
4 testimony will focus on the Arizona intrastate long distance and local exchange markets.  
5

6 **BACKGROUND**

7 **Q. What is the purpose of your testimony?**

8 A. In addition to providing information on the general competitive environment in which the  
9 AT&T/BellSouth application is being evaluated, I will provide specifics regarding  
10 AT&T’s and BellSouth’s competitive situation pertaining to the approval of this merger  
11 and respond to the Direct Testimony of AT&T and BellSouth witnesses in this matter<sup>2</sup>.  
12

13 **Q. Explain the primary information sources used in your analysis?**

14 A. I have relied on information obtained in other proceedings such as the SBC/AT&T  
15 merger, Docket T-03346A-05-0149, as well as information provided by the applicants in  
16 this proceeding. I have also made use of Annual Report information filed by all  
17 telecommunication providers with the Commission.  
18

19 **GENERAL COMPETITIVE ENVIRONMENT**

20 **Q. What is the general competitive environment pertaining to the AT&T/BellSouth**  
21 **application?**

22 A. Since only a few months have elapsed between the time the SBC/AT&T merger was  
23 approved and the filing of this merger application, the general state of local exchange  
24 competition in Arizona has not changed dramatically. Arizona’s telecommunications

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<sup>1</sup> The consolidated entity resulting from the merger of SBC and AT&T.

<sup>2</sup> Direct Testimony of Rick L. Moore, AT&T Inc., May 8, 2006; Direct Testimony of James G. Harralson, BellSouth Corporation, May 8, 2006



1 environment is dominated by Qwest, an ILEC, and Cox, a CLEC affiliate of the dominant  
2 video cable provider in Arizona<sup>3</sup>.

3  
4 **Q. Can you describe some of the key factors in the general competitive environment?**

5 A. The AT&T/BellSouth merger application is being evaluated in basically the same  
6 environment that Staff summarized in the SBC/AT&T merger, as follows:

7 1. A very important general factor in Arizona's competitive environment is market size.

8 Arizona is second only in size to Washington State within Qwest's incumbent local  
9 exchange carrier ("ILEC") region<sup>4</sup>. Arizona's position near or at the top in growth<sup>5</sup>  
10 nationally should be a magnet for local exchange competition and deployment of  
11 many telecommunications alternatives and technologies.

12 2. Nonetheless, Staff believes that wireline or local exchange competition in its  
13 traditional sense has slowed and some could argue that the size of the local exchange  
14 market is actually in decline<sup>6</sup>. At the time of the 1984 AT&T Divestiture, the  
15 penetration of main lines in homes was believed to be very high, approaching a main  
16 line in every home, and the wireline provider focus turned to providing additional  
17 lines. Competitive alternatives have since impacted both main and additional line  
18 markets. Even more significant has been the impact of competitive alternatives on the  
19 long distance market.<sup>7</sup>

20 3. Wireline competition, associated with local exchange service and enabled by the 1996  
21 Telecommunications Act, has declined, in part because of changes in the Federal

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<sup>3</sup> Direct Testimony of Armando Fimbres, Utilities Division, Arizona Corporation Commission, June 28, 2005, T-03346A-05-0149 et. al; Direct Testimony of Armando Fimbres, Utilities Division, Arizona Corporation Commission, June 28, 2005, T-01051B-03-0454

<sup>4</sup> United States Census 2000, Table 1, States Ranked by Population

<sup>5</sup> United States Census 2000 Projections, Table 1: Interim Projections: Ranking of Census 2000 and Projected 2030 State Population and Change: 2000 to 2030

<sup>6</sup> Local Telephone Competition: Status as of June 30, 2005, (FCC) Industry Analysis and Technology Division, Wireline Competition Bureau, April 2006, Table 1

<sup>7</sup> Trends in Telephone Service (FCC), June 21, 2005

1 Communications Commission's ("FCC") Unbundled Network Element ("UNE")  
2 rules<sup>8</sup> and in part because of the continuing evolution of technology which addresses  
3 areas of customer demand that are difficult to satisfy with traditional wireline service.

4 4. Wireless competition has experienced enormous growth over the last few years. In  
5 Arizona, the number of wireless phones is approaching the number of wireline  
6 phones<sup>9</sup>. Wireless and internet email are believed to have been significant factors in  
7 the downward movement of long distance rates.

8 5. Voice over Internet Protocol ("VoIP"), Wireless Fidelity ("WiFi") and Worldwide  
9 Interoperability of Microwave Access ("WiMAX") are perhaps the most current  
10 examples of technologies<sup>10</sup> that are impacting the local exchange and long distance  
11 markets. More recently, Internet Protocol-based TV ("IPTV") has gained considerable  
12 attention. All are technologies that may not yet have much direct impact on local  
13 exchange wireline voices services but, nonetheless, compete for the discretionary end-  
14 user dollars available for local exchange and long distance services.

15  
16 **Q. Have the number of competitive local exchange carriers ("CLECs") competing in the**  
17 **Arizona local exchange market changed measurably since the SBC/AT&T merger?**

18 A. No. The key participants remain the same – AT&T, Arizona DialTone, Cox, MCI<sup>11</sup>,  
19 McLeodUSA and Eschelon. In Decision 68447, the Commission granted<sup>12</sup> Qwest  
20 Communications Corporation ("QCC") CLEC authority for the Enterprise Market. As  
21 stated in the testimony of AT&T and BellSouth witnesses, BellSouth is not certificated to  
22 provide Local Exchange Service within Arizona and as such has zero CLEC presence.

<sup>8</sup> FCC-04-0290, TRO Remand Order, December 15, 2004

<sup>9</sup> 12/22/04, "Federal Communications Commission Releases Data On Local Telephone Competition",  
Table 9, Table 13

<sup>10</sup> Direct Testimony of Armando Fimbres, Utilities Division, Arizona Corporation Commission, June 28, 2005, T-03346A-05-0149 et. al; Direct Testimony of Armando Fimbres, Utilities Division, Arizona Corporation Commission, June 28, 2005, T-01051B-03-0454

<sup>11</sup> MCI has merged with Verizon but their Arizona CLEC is still using the MCI brand.

<sup>12</sup> Decision 68447 was ordered February 2, 2006

1 **Q. Does Staff note any major changes in long distance services in Arizona since the**  
2 **SBC/AT&T merger?**

3 A. No. A few long distance resellers have exited the market but their exits were not major  
4 surprises and of little impact and they have been replaced by new entrants. Staff sees  
5 these minimal changes in the long distance market as representative of the highly  
6 competitive situation that exists in long distance.

7  
8 **AT&T'S COMPETITIVE SITUATION**

9 **Q. Has AT&T's competitive situation changed since the SBC/AT&T merger?**

10 A. No.

11  
12 **Q. What is AT&T's competitive situation specific to Arizona?**

13 A. AT&T is still one of the largest CLEC providers of business services in Arizona.  
14 However, AT&T's withdrawal from UNE-P based residential services has continued. If  
15 AT&T is returning to mass market competition in Arizona, Staff is unaware of the effort.

16  
17 **Q. Has AT&T agreed to comply with the conditions ordered by the Commission in the**  
18 **SBC/AT&T merger?**

19 A. Yes. On March 29, 2006, AT&T filed a letter in Docket No. T-03346A-05-0149, related  
20 to Decision 68269. In that filing, AT&T expressed its willingness to support the  
21 conditions within Decision 68269, even if SB 1486<sup>13</sup> should become law.<sup>14</sup> The letter  
22 from AT&T is attached as Exhibit 1. AT&T witness, Rick Moore, amplifies that position

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<sup>13</sup> SB 1486 would prohibit the Arizona Corporation Commission from subjecting a wireless telecommunications provider to arbitration unless the provider and customer consent in writing. It also states the ACC can arbitrate disputes involving telecommunications services in a bundle of services that the ACC has jurisdiction over.

<sup>14</sup> SB-1486 was signed into law by Governor Napolitano on May 31, 2006.

1 with his testimony<sup>15</sup> - "AT&T will continue to comply with the notice, reporting and  
2 residential arbitration provisions of the Decision."  
3

4 **Q. Please summarize your conclusions about AT&T's competitive situation in Arizona?**

5 A. (1) AT&T is still providing CLEC service to a significant number of business customers  
6 in Arizona.

7 (2) AT&T's CLEC position with residence customers should be declining given its  
8 announcement to discontinue marketing residence customers in Arizona and other  
9 states.

10 (3) AT&T's dominant position in long distance service has diminished due in part to  
11 wireless and internet alternatives. However, its revenue position in Arizona suggests  
12 that AT&T remains a major force in traditional long distance.  
13

14 **BELLSOUTH'S COMPETITIVE SITUATION**

15 **Q. What is BellSouth's general competitive situation?**

16 A. BellSouth is one of the seven RBOCs divested from AT&T in 1984 but, unlike SBC and  
17 Verizon<sup>16</sup>, BellSouth has not sought major acquisitions as a path to corporate growth. The  
18 most noteworthy venture of BellSouth is the Cingular Wireless entity formed in  
19 partnership with SBC (now AT&T). BellSouth is a \$20 Billion plus corporation  
20 headquartered in Atlanta, serving over 43 million access lines in 9 southern states.  
21 Arizona is not known to be a factor in BellSouth's competitive plans. [REDACTED]  
22

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<sup>15</sup> Direct Testimony of Rick L. Moore, Managing Director, Corporate Development AT&T Inc., May 8, 2006, page 4

<sup>16</sup> E.g., SBC acquisitions of Ameritech, Pacific Telesis and SNET; Verizon formed by merger of NYNEX and Bell Atlantic and acquisition of GTE

1 **Q. What is BellSouth's competitive situation specific to Arizona?**

2 A. BellSouth has almost no presence in Long Distance and zero presence in Local Exchange  
3 services.

4  
5 **Q. Please summarize your conclusions about BellSouth's competitive situation in**  
6 **Arizona?**

7 A. (1) BellSouth has almost no presence in Long Distance Service within Arizona.

8 (2) BellSouth has no certificate to provide Local Exchange Service within Arizona.

9 (4) BellSouth annual revenues ts Arizona operations are de minimums. [REDACTED]  
10

11 **SUMMARY AND CONCLUSIONS**

12 **Q. If the merger between AT&T and BellSouth is approved by the Commission, what is**  
13 **the impact on the competitive situation for CLEC telecommunications providers in**  
14 **Arizona?**

15 A. Any traditional analysis of the merger's impact on market structure indicates that AT&T  
16 and BellSouth competitive positions in Arizona overlap even less that the positions of  
17 SBC and AT&T, which had little overlap. Therefore, the likelihood that the merger of  
18 BellSouth and AT&T will result in reduced competition is essentially zero.  
19

20 **Q. Will the merger of AT&T and BellSouth significantly change the market share**  
21 **situation?**

22 A. No.  
23

1   **Q.    Is there a way to actually measure the combined market impact of the SBC and**  
2   **AT&T merger?**

3   A.   Staff has used the Herfindahl-Hirschman Index ("HHI") to gauge the level of market  
4       concentration in other mergers and related matters. The HHI analysis in the SBC/AT&T  
5       merger disclosed zero impact. BellSouth's market share is also believed to be very small,  
6       therefore, the HHI impact can confidently be assumed to be zero.

7  
8   **Q.    Please summarize your conclusions about the impact of BellSouth's merger with**  
9   **AT&T in Arizona?**

10  A.   (1)  AT&T's and BellSouth's competitive positions in Arizona are very different.  
11       (2)  Combining the separate operations of AT&T and BellSouth should not result in  
12       duplicate operations in Arizona that would require force reductions and the  
13       realignment of resources.  
14       (3)  AT&T has a significant and measurable share of Arizona's telecommunications  
15       market while BellSouth's presence in Arizona is essentially non-existent.  
16       (4)  AT&T has already decided to curtail its local exchange operations in Arizona. A  
17       BellSouth merger with AT&T should not add harm to that decision.

18  
19  **Q.    Are there any other issues to consider?**

20  A.   Yes. In early 2006, AT&T informed Staff of a Directory Assistance overcharge situation  
21       with AT&T business customers that occurred between March 2002 and August 2005. As  
22       conveyed to Staff by AT&T representatives, this overcharge took place co-incident with  
23       an authorized Directory Assistance rate increase for TCG customers. The increase,  
24       however, was not authorized for AT&T business customers. While AT&T restored the  
25       Directory Assistance rate for AT&T business customers to the authorized level, no official

1 solution has been reached for refunding the overcharged amount to AT&T business  
2 customers. Staff recommends that this issue be addressed in this proceeding.

3  
4 **Q. Do you recommend the AT&T merger with BellSouth be approved?**

5 **A.** Yes, on the condition that AT&T and BellSouth (or the merged entity) comply with the  
6 following recommendations:

7  
8 That for one year following merger close or until AT&T and BellSouth inform the  
9 Commission by filing an affidavit with Docket Control, as a compliance item in this  
10 docket, that merger-related activities are completed, whichever comes last, AT&T and  
11 BellSouth shall provide written notification to the Director of the Utilities Division and to  
12 the individual members of the Commission 60 days prior to any planned merger-related  
13 Arizona workforce layoffs; any planned merger-related Arizona plant closings; and any  
14 planned merger-related Arizona facility closings.

15  
16 That if the newly Merged Company, or any of its regulated affiliates, chooses to conduct  
17 layoffs or facility closings in Arizona that are attributable to the Merger, it shall file a  
18 report within two months of the effective date of the layoffs or closings with the  
19 Commission stating why it was necessary to do so and what efforts the Company made or  
20 is making to re-deploy those individuals elsewhere in the Company. This report shall also  
21 state whether any savings associated with facility closings have been re-invested in the  
22 Company's Arizona operations, and if not, why. This report shall be filed for one year  
23 following merger close or until AT&T and BellSouth inform the Commission by filing an  
24 affidavit with Docket Control that merger related activities are completed, whichever  
25 comes last.  
26

1 Pursuant to a letter docketed on March 26, 2006 by AT&T in T-03346A-05-0149, the  
2 newly Merged Company, and any of its regulated affiliates, shall continue to comply with  
3 conditions ordered in Decision 68269 on November 8, 2005 pertaining to the SBC merger  
4 with AT&T.

5  
6 **Q. Do you have any additional recommendations?**

7 A. Yes. Staff recommends that AT&T be required to file, for Commission approval, a plan  
8 for refunding the Directory Assistance overcharges to AT&T business customers, as  
9 explained earlier, within 30 days of a Commission order approving this merger.

10  
11 **Q. Does this conclude your direct testimony?**

12 A. Yes, it does.



## Exhibit 1



Wayne Watts  
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and Associate General Counsel  
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March 29, 2006

**RECEIVED**

MAR 30 2006

**Z Corporation Commission  
Director of Utilities**

**HAND DELIVERED**

Commissioner Jeff Hatch-Miller, Chairman  
Commissioner William A. Mundell  
Commissioner Marc Spitzer  
Commissioner Mike Gleason  
Commissioner Kristin K. Mayes

*Re: Decision No. 68269 and SB 1486*

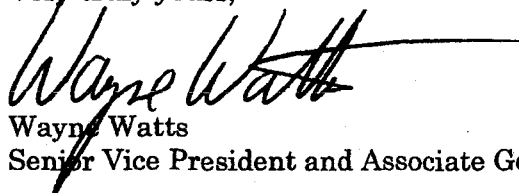
Dear Commissioners:

As you know in Decision No. 68269, the Decision in which this Commission approved the merger of SBC Communications Inc. and AT&T Corp., we agreed to participate in a binding arbitration program administered by the Commission. The program relates solely to billing and unauthorized charge disputes by AT&T Arizona residential customers who purchase telecommunications services, including wireline, wireless and VOIP telephony services, offered by an AT&T controlled affiliate.

We have recently learned that the Arizona Legislature is considering SB 1486 which, in its present form would require that telecommunications providers consent to arbitration before the Commission has jurisdiction to hear such complaints regardless of prior orders it has entered such as Decision No. 68269. We do not support that legislation. Although we continue to encourage the Arizona Commission to adopt uniform standards that will apply to all providers, AT&T stands by the assurances it gave you in the discussions which lead to the entry of Decision No. 68269. It will continue to do so regardless of whether SB 1486 becomes law. Simply stated "a deal is a deal" and we intend to stand by ours.

We look forward to working with the Commission to assure that all consumers are given the telecommunications service of their choice.

Very truly yours,

  
Wayne Watts  
Senior Vice President and Associate General Counsel

cc: Ernest Johnson, Director, ACC Utilities Division (hand-delivered)  
Chris Kempley, Chief Counsel, Legal Division (hand-delivered)

## Exhibit 2

**[REDACTED]**